Power, 1 Ball & B. 145; *In re Estlin*, 72 L. J. Ch. 687; *In re Gosling*, 16 T. L. R. 152. See TUDOR ON CHARITIES, 4 ed., 46–60. Even trusts "for elderly widows and spinsters," although not further limited to charity in the will, have been construed to apply only to those who are poor and are so held charitable. *Thompson* v. *Corby*, 27 Beav. 649; *Re Dudgeon*, 74 L. T. (N. S.) 613. Again, trusts for the relatives of the founder if permanent and limited to those who are poor are held charitable and valid. *Attorney General* v. *Northumberland*, 7 Ch. D. 745. See GRAY, RULE AGAINST PERPETUITIES, 3 ed., § 683 and n. *A fortiori*, gifts for general charitable purposes with a preference for a particular lineage are valid trusts. *Dexter* v. *Harvard College*, 176 Mass. 192, 57 N. E. 371; *Franklin* v. *Armfield*, 2 Sneed (Tenn.) 305, 351. See *Attorney General* v. *Sidney Sussex College*, 34 Beav. 654, 667. And scholarships with such preferences were early recognized. *Flood's Case*, Hobart 136. *Cf. Spencer* v. *All Souls College*, Wilmot 163. Furthermore, were the preferences invalid, the general charitable gift would be good. See *Dexter* v. *Harvard College*, *supra*, 196. The over-riding charitable purpose should prevail even if some of the directions for applications cannot be carried out because not charitable. *In re Douglas*, 35 Ch. D. 472. See *Hunter* v. *Attorney General*, [1899] A. C. 309, 324. Accordingly it seems entirely proper to carry out the donor's intention in the principal case. *Cf. Matter of Robinson*, 203 N. Y. 380, 96 N. E. 925.

TRUSTS — INCOME AND CORPUS — PROFITS BY SALE OF STOCK: APPORTIONMENT BETWEEN LIFE TENANT AND REMAINDERMAN. — The trustee of a *corpus* largely composed of stocks, was given a power of purchase and sale. The right to the profits gained in some of the transactions made under this power, are now contested by the life tenant and the remainderman under the trust. *Held*, that the life tenant is entitled to all the gains realized from dealings in the stock, except so much as are necessary to make the present *corpus* equal in value to the original *corpus* plus the amount that the original stocks increased in value while still in the hands of the trustee. *In re Barron's Will*, 155 N. W. 1087 (Wis.).

In the case of a trust of a share in a business the net profits earned go to the life tenant. *Heighe* v. *Littig*, 63 Md. 301. See LORING, A TRUSTEE'S HANDBOOK, 3 ed., 124. The decision in the principal case seems to be rested on this principle. But clearly a power of purchase and sale of stock is given the trustee only as a means of protecting the *corpus*, and does not constitute the trust estate a business in which the life tenant has an interest. Hence, not the earnings of the trustee, but only the earnings of the corporation whose shares have been bought, constitute the life tenant's income. Now an increased market value of the stock of a corporation may be due to undeclared earnings as well as unearned increment. As Wisconsin gives the declared dividends of stock to income or *corpus*, accordingly as the fund from which they are declared has accrued from earnings or unearned increment, it would seem as if on principle a similar rule should apply to the apportionment of gains due to increased value of stock. See *Miller* v. *Payne*, 150 Wis. 354, 377, 383, 136 N. W. 811, 819, 821; see 29 HARV. L. REV. 551. But see 2 PERRY, TRUSTS, 5 ed., § 545, note, p. 94. Such a course, however, is impractical, if not impossible. Therefore, the courts have almost invariably added the entire increase in value of the stock to the *corpus*. *Graham's Estate*, 198 Pa. 216, 47 Atl. 1108; *In re Robert's Will*, 40 Misc. 512, 82 N. Y. Supp. 805. *Cf. Billings* v. *Warren*, 216 Ill. 281, 74 N. E. 1050. All the profits from a sale thus belong to the remainderman, and the life tenant is restricted to his share of the declared dividends. And undoubtedly it is more in accord with the intention of the settlor that the fluctuation should occur in the *corpus* rather than the income. Moreover, as the remainderman must bear the loss of any shrinkage in the funds, it is but equitable that he take the gain. See *Graham's Estate*, *supra*, 219. Again the life

tenant is fully protected under this apportionment, for an investment by the trustee in a non-dividend paying stock is certainly a breach of trust. See *Jordan* v. *Jordan*, 192 Mass. 337, 345, 78 N. E. 459, 461; *Kinmonth* v. *Brigham*, 5 Allen (Mass.) 270, 278. In such case, besides his action against the trustee, the life tenant should be permitted a lien for interest at the market rate on any profit gained by resale of this stock.

WAR — PARTNERSHIP — ALIEN ENEMY PARTNERS — CONDEMNATION OF CAPTURED PARTNERSHIP PROPERTY. — A partnership composed of four partners, two Germans both of German domicile, and two Englishmen resident in Shanghai, was registered at the German consulate in Shanghai as a German firm. A cargo belonging to the partnership was captured. *Held*, that the shares of the German partners be condemned, and those of the English partners be restored. *The Eumaeus*, 51 L. J. 7 (Adm. Ct.).

The important consideration in determining liability to condemnation as enemy cargo, is the trade domicile of the owner of the goods. See *The Gerasimo*, 11 Moore P. C. 88, 96; *Janson* v. *Driefontein Consolidated Mines, Ltd.*, [1902] A. C. 484, 505. Consequently the property of a neutral or friend, having a trade domicile in a hostile country, is confiscable. *The Venus*, 8 Cranch. (U. S.) 253; *The Baltica*, Spinks P. C. 264. *Cf. O'Mealey* v. *Wilson*, 1 Camp. 482. Conversely, the property of an alien enemy having a trade domicile outside the hostile country is not subject to condemnation. *The Portland*, 3 C. Rob. 41. In the case of a firm it is submitted that under any theory of partnership the individual trade domiciles of the partners must govern condemnation. For at common law, even in the absence of the usual statutes, it is forbidden to make contracts with alien enemies, and antebellum contracts of this sort, if executory, are dissolved by the declaration of war. *The Hoop*, 1 C. Rob. 196; *Potts* v. *Bell*, 8 T. R. 548. See *Clemontson* v. *Blessig*, 11 Ex. 135, 141 n. Since a partnership is based on an executory contract, it is at once dissolved. *Griswold* v. *Waddington*, 15 John. (N. Y.) 57, 16 *id.*, 438. Hence its members must be treated separately. But to determine the proportion properly confiscable presents a difficult problem. Until the partnership has been wound up and its accounts settled, each partner really has nothing but a right against the firm for the portion of the surplus which may be found to be due him. Of course, this may not bear any relation to their respective shares in the capital. But it is beyond the power of the prize court to determine this, and any attempt to do so would seriously hinder an effective administration of prize law. Hence the principal case is amply justified by expediency in following the old common law conception of the partners as tenants in common of partnership personalty, to the extent of their shares in the enterprise.

WILLS — EXECUTION — ATTESTING WITNESSES — STOCKHOLDERS OF A CORPORATE EXECUTOR. — An Illinois statute provides that, if one of the necessary subscribing witnesses to a will is given a beneficial interest in the will, the interest shall be void, but the witness shall testify as to the rest of the will. (1913, HURD'S REV. ST. c. 148, § 8.) A corporation was made the executor of a will. A stockholder and director of the corporation was a necessary subscribing witness. *Held*, that the stockholder is a valid witness and that the corporation is disqualified as executor. *Scott* v. *Couch*, 111 N. E. 272 (Ill.).

In most jurisdictions an executor is considered a valid subscribing witness to a will. *Rucker* v. *Lambdin*, 20 Miss. 230. See *Cochran* v. *Brown*, 76 N. H. 9, 10, 78 Atl. 1072, 1073. See 22 HARV. L. REV. 616. *A fortiori* the witness in the principal case would be competent and the whole will valid. But in Illinois, aside from the statute, an executor is considered sufficiently interested to be incompetent. *Jones* v. *Grieser*, 238 Ill. 183, 87 N. E. 295. So is a witness who has a contract with the executor for a part of his commissions. *Smith* v. *Goodell*,